

Senate Bill No. 1084

Passed the Senate August 29, 2005

Secretary of the Senate

Passed the Assembly August 25, 2005

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 4464, 4475, 4475.1, 4475.5, 4476, and 4480 of, and to add Section 4442.6 to, the Public Resources Code, relating to forest practices.

LEGISLATIVE COUNSEL'S DIGEST

SB 1084, Kehoe. Forest practices.

Under existing law, the State Board of Forestry and Fire Protection is required to classify all lands within the state to determine areas in which the financial responsibility of preventing and suppressing fires is primarily the responsibility of the state.

The bill would prohibit a person from selling, offering for sale, leasing, or renting to a person equipment powered by a specified internal combustion engine, unless the equipment has a permanent warning label attached warning of the danger of starting a fire from sparks created by the operation of the equipment. This bill would require a person who manufactures the described equipment to attach to that equipment the above-described permanent warning label. The bill would make it an infraction to violate these prohibitions and requirements, thereby imposing a state-mandated local program by creating a new crime.

The bill would revise the definition of “wild land” and define “hazardous fuel reduction” for purposes of a state responsibility area.

The bill would make related changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 4442.6 is added to the Public Resources Code, to read:

4442.6. (a) A person shall not sell, offer for sale, lease, or rent to a person any equipment that is powered by an internal combustion engine subject to Section 4442 or 4443, and not subject to Section 13005 of the Health and Safety Code, unless that equipment has a permanent warning label attached that is in plain view to the operator that states, “WARNING—Operation of This Equipment May Create Sparks That Can Start Fires Around Dry Vegetation. A Spark Arrestor May be Required. The Operator Should Contact Local Fire Agencies For Laws or Regulations Relating to Fire Prevention Requirements.”

(b) A person who manufactures equipment that is powered by an internal combustion engine described in subdivision (a) shall attach to that equipment a permanent warning label that is in plain view to the operator and that complies with subdivision (a).

(c) Notwithstanding Section 4021, a violation of subdivision (a) or (b) is an infraction punishable by a fine of not more than one hundred dollars (\$100).

SEC. 2. Section 4464 of the Public Resources Code is amended to read:

4464. Unless the context clearly requires otherwise, the following definitions govern the construction of this chapter:

(a) “Wild land” means any land that is classified as a state responsibility area pursuant to Article 3 (commencing with Section 4125) of Chapter 1 and includes any land having a flammable plant cover. “Wild land” also means any land not classified as a state responsibility area where the geographic location of these lands and accumulation of wild land fuel is such that a wild land fire occurring on these lands would pose a threat to a state responsibility area.

(b) “Wild land fuel” means any timber, brush, grass, or other flammable vegetation, living or dead, standing or down.

(c) “Wild land fire” means any uncontrolled fire burning on wild land.

(d) “Prescribed burning” or “prescribed burning operation” means the planned application and confinement of fire to wild land fuels on lands selected in advance of that application to achieve any of the following objectives:

(1) Prevention of high-intensity wild land fires through reduction of the volume and continuity of wild land fuels.

(2) Watershed management.

- (3) Range improvement.
- (4) Vegetation management.
- (5) Forest improvement.
- (6) Wildlife habitat improvement.
- (7) Air quality maintenance.

(e) “Prescribed burn crew” means personnel and firefighting equipment of the department that are prepared to contain fire set in a prescribed burning operation and to suppress any fire that escapes during a prescribed burning operation.

(f) “Person” means any natural person, firm, association, partnership, business trust, corporation, limited liability company, company, or combination thereof, or any public agency other than an agency of the federal government.

(g) “Hazardous fuel reduction” means the application of practices to wild lands, the primary impact of which to the vegetation is generally limited to the reduction of surface and ladder wild land fuels. These practices include, but are not limited, to prescribed fire, piling by machine or by hand in preparation for burning, thinning, pruning, or grazing. Treatments that reduce crown densities shall be prescribed only for the purpose of impacting fire behavior, and where it can be reasonably concluded based on the proposed treatment that the likelihood for the formation of crown fires is reduced.

SEC. 3. Section 4475 of the Public Resources Code is amended to read:

4475. The director, with the approval of the Director of General Services, may enter into a contract for prescribed burning or other hazardous fuel reduction that is consistent with this chapter and the regulations of the board with (1) the owner or any other person who has legal control of any property or (2) any public agency with regulatory or natural resource management authority over any property that is included within any wild land for any of the following purposes, or any combination thereof:

- (a) Prevention of high-intensity wild land fires through reduction of the volume and continuity of wild land fuels.
- (b) Watershed management.
- (c) Range improvement.
- (d) Vegetation management.
- (e) Forest improvement.

(f) Wildlife habitat improvement.

(g) Air quality maintenance.

No contract may be entered into pursuant to this section unless the director determines that the public benefits estimated to be derived from the prescribed burning or other hazardous fuel reduction pursuant to the contract will be equal to or greater than the foreseeable damage that could result from the prescribed burning or other hazardous fuel reduction.

SEC. 4. Section 4475.1 of the Public Resources Code is amended to read:

4475.1. The director, with the approval of the Director of General Services, may enter into a master agreement with federal land management agencies to conduct joint prescribed burning operations on wild lands and federal lands where these operations serve the public interest and are beneficial to the state. This master agreement shall be known as the Multiagency Agreement for Cooperative Use of Prescribed Fire and shall establish guidelines for the cooperative management of joint prescribed burning operations. The master agreement shall require the completion of a project agreement for each individual prescribed burn which shall include the following:

(a) A list of all participants.

(b) A joint prescribed burn plan.

(c) A display of the project costs to be assumed by each participant.

(d) A summary of the benefits to be received by each participant.

(e) An apportionment of suppression cost to each participant in the event a wildfire escapes from the project.

Project costs to be assumed by each agency or cooperator shall be based on the benefits received by each participant. The apportionment of suppression cost shall be based on the following:

(1) The benefits received by each participant.

(2) The amount at risk of each participant.

(3) The cost to produce the desired benefits received by each participant.

(4) The total acreage included by each participant.

SEC. 5. Section 4475.5 of the Public Resources Code is amended to read:

4475.5. (a) The state may assume a proportionate share of the costs of site preparation and prescribed burning or other hazardous fuel reduction conducted pursuant to this article on wild lands other than wild lands under the jurisdiction of the federal government. The state's share of those costs shall bear the same ratio to the total costs of the operation as the public benefits bear to all public and private benefits to be derived from the prescribed burning operation or other hazardous fuel reduction, as estimated and determined by the director. The state's share of the costs may exceed 90 percent of the total costs of the operation only if the director determines that no direct private economic benefits will accrue or will be utilized by a person that owns or controls any property under contract pursuant to Section 4475.

(b) The board shall adopt regulations establishing standards to be used by the director in determining the state's share of these costs and in determining whether, pursuant to Section 4475, the public benefits of a prescribed burning operation or other hazardous fuel reduction will equal or exceed the foreseeable damage therefrom.

(c) The determination of public and private benefits pursuant to this section shall reflect any substantial benefit to be derived from accomplishing any of the purposes specified in Section 4475 and the prevention of degradation of air quality.

(d) All or part of these costs to be borne by the person contracting with the department may be met by the value of materials, services, or equipment furnished by that person directly, or furnished by that person pursuant to an agreement with a private consultant or contractor, or furnished by a combination of both means, that are determined by the department to be suitable for the preparation for, and the conduct of, the prescribed burning operation or other hazardous fuel reduction.

SEC. 6. Section 4476 of the Public Resources Code is amended to read:

4476. Any contract which is entered into pursuant to this article shall do all of the following:

(a) Vest in the director the final authority to determine the time during which wild land fuel and structural fire hazards may be burned to minimize the risk of escape of a fire set in a

prescribed burning operation and to facilitate maintenance of air quality.

(b) Clearly state the obligation of each party to the contract to provide, maintain, and repair equipment and indicate the number of each type of equipment to be provided and the duration of its availability.

(c) Designate an officer of the department as the fire boss with final authority to approve and amend the plan and formula applicable to a prescribed burning operation, to determine that the site has been prepared and the crew and equipment are ready to commence the operation, and to supervise the work assignments of departmental employees and all personnel furnished by the person contracting with the department until the prescribed burning is completed and all fire is declared to be out.

(d) Specify the duties of, and the precautions taken by, the person contracting with the department and any personnel furnished by that person.

(e) Provide that any personnel furnished by a person contracting with the department to assist in any aspect of site preparation or prescribed burning or other hazardous fuel reduction shall be an agent of that person for all purposes of workers' compensation. However, any volunteer recruited or used by the department to suppress a wild land fire originating or spreading from a prescribed burning operation is an employee of the department for all purposes of workers' compensation.

(f) Specify the value assigned to the materials, services, or equipment furnished by the person contracting with the department in lieu of payment of all or part of that person's share of the actual costs.

(g) Specify the total costs of the prescribed burning operation or other hazardous fuel reduction and the pro rata share thereof for each party to the contract. Any person contracting with the department shall, prior to the commencement of any work by the department, place on deposit in an interest-bearing escrow or trust account with a California-licensed financial institution an amount equal to that person's pro rata share of the costs, less the value of materials, services, or equipment specified pursuant to subdivision (e). Interest earned on the account shall accrue to the depositor and may be separately disbursed from the principal amount upon request of the depositor. Disbursement of funds on

deposit in the trust or escrow account shall be authorized by the depositor within 15 days after completion, to the depositor's satisfaction, of all work specified in the contract to be done by the department.

(h) Provide that the department may, in its discretion, purchase a third-party liability policy of insurance that provides coverage against loss resulting from a wild land fire sustained by any person or public agency, including the federal government. The amount of the policy, if purchased, shall be determined by the director. The policy shall name the person contracting with the department and the department as joint policyholders. The premium shall be included as a cost prorated as provided in subdivision (g). A certificate of insurance, if purchased, covering each policy shall be attached to or become a part of the contract. If the department elects not to purchase insurance, the department shall agree to indemnify and hold harmless the person or public agency contracting with the department with respect to liability arising out of performance of the contract.

SEC. 7. Section 4480 of the Public Resources Code is amended to read:

4480. In any area of the state where there are substantially more requests for prescribed burning operations or other hazardous fuel reduction pursuant to this article than can be conducted directly by the department in a single fiscal year, the director may, with the approval of the Director of Finance, enter into an agreement with private consultants or contractors or with other public agencies for furnishing all or a part of the state's share of the responsibility for planning the operation, preparing the site, and conducting the prescribed burning or other hazardous fuel reduction. The private consultant or contractor or other public agency, and the work assignments of its employees, shall be supervised by the fire boss when conducting prescribed burning operations, or designated officer of the department when conducting other hazardous fuel reduction, as provided in subdivision (c) of Section 4476. No agreement may be entered into pursuant to this section unless the director determines that it will enable the prescribed burning operation to be conducted at a cost equal to, or less than, the cost that would otherwise be incurred by the state.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2005

Governor